

ROGER K. OGDEN

IBLA 83-718

Decided October 31, 1983

Appeal from decision of the District Manager, Salmon District Office, Idaho State Office, Bureau of Land Management, rejecting desert land entry application I-8888.

Affirmed.

1. Administrative Practice--Desert Land Entry: Generally

Where BLM uses a computerized economic analysis to justify rejection of a desert land entry application, BLM must explain the basis of its analysis and data and the deficiencies of the applicant's proposal in its decision so that the applicant has some basis for understanding and accepting the rejection or appealing and disputing it.

2. Desert Land Entry: Applications

Where BLM determines that lands identified in a desert land entry application cannot be farmed as an economically feasible operating unit, BLM properly rejects the application.

APPEARANCES: Roger K. Ogden, pro se.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

Roger K. Ogden has appealed the May 23, 1983, decision of the District Manager, Salmon District Office, Idaho State Office, Bureau of Land Management (BLM), rejecting his desert land entry application I-8888 because BLM's analysis of his proposal showed that it would not be economically feasible.

Appellant submitted a petition/application for classification and desert land entry on September 10, 1974, for the E 1/2 NE 1/4, SE 1/4 sec. 26, and the N 1/2 NE 1/4 sec. 35, T. 16 N., R. 26 E., Boise meridian. Following completion of an environmental assessment (January 7, 1980), mineral report (December 8, 1981), and land report (June 28, 1982), BLM approved classification of the lands as suitable for desert land entry and notified appellant by letter dated November 2, 1982. Thereafter, BLM performed its computer-assisted economic analysis for appellant's entry to project the anticipated revenues versus production costs based on a yield of 2 tons of alfalfa and 40 bushels of barley for three variations of appellant's irrigation system. In each case the adjusted net revenue was a negative amount.

1/ The most favorable projection of the three (Plan 1) showed a deficit of \$21,264.39.

In his statement of reasons, appellant urges that, contrary to BLM's data, the average yield in the area is 4 to 5 tons of alfalfa and 85 to 110 bushels of barley per acre. Appellant points out that BLM used prices

1/ The total cost of the irrigation system varied with changes in the number of pumps, wells, and water lines and different projections for the amount of annual labor costs for water-related work.

for new equipment in its calculations when he intends to use equipment he already owns or can buy used at cheaper prices. He argues that he plans to do most of the work himself rather than employ others. He notes that although BLM lists the soil as poor, the county agent has told him that the soil conditions would not affect the production of 4 or more tons per acre.

BLM's decision did not provide appellant with any detailed analysis of the reasons supporting its finding. 2/ After review of the record, the Board informed BLM, by memorandum dated August 4, 1983, that it could find no basis in the case record for the yield figures used by BLM or explanation of the assumptions on which the computer analysis was developed and therefore there was no way to determine the correctness of BLM's decision or the merit of appellant's arguments. We requested BLM to comment on the matters raised by appellant and our concerns and, if feasible, to run the computer analysis using appellant's data for comparison. 3/

In response BLM has submitted detailed comments on appellant's arguments and two informational documents concerning its computer assisted

2/ In its entirety, the decision reads:

"On May 16, 1983 this office completed an Economic Analysis of your desert land application as required by 43 CFR 2520.0-8(d)(3). The analysis was completed to determine the practicability of farming the lands as an economically feasible operating unit. Some of the factors used include soils, climate, topography, farming systems and practices common to the locality, character of the subject land and adjacent land, as well as your proposed plan of irrigation.

"The analysis showed that your proposed entry would not be an economical unit to farm. Your application is hereby rejected.

"This decision becomes final thirty days after its receipt unless an appeal is filed pursuant to the regulations in 43 CFR, Part 4, Subpart E. (See enclosed Appeal Information Sheet, ID-040-1840-2.)"

3/ A copy of this memorandum was sent to appellant and BLM was directed to send a copy of its response to appellant, which it did.

economic analysis. The first of those documents is Idaho Instruction Memorandum No. ID-83-134 concerning criteria for processing agricultural development applications to which is attached a cooperative agreement between BLM and the State of Idaho's Department of Water Resources (IDWR) on agricultural development in Idaho and an addendum to the agreement detailing the assumptions underlying the agricultural economic feasibility computer model. The computer model was developed jointly by BLM and IDWR. See Instruction Memorandum No. ID-83-134. The second document is a copy of the user's manual for computer-assisted economic evaluation of desert land entry applications. BLM has also submitted an amended version of its computer analysis for Plan 1 using appellant's prices and higher yield figures.

[1] Initially we state emphatically that it is incumbent upon BLM to ensure that its decision is supported by a rational basis and that such basis is stated in the written decision and demonstrated in the record. Otherwise the Department is left open to the charge that its actions are arbitrary. This Board has explained the reasons for ensuring that both the written decision and record reflect a rational basis for BLM's actions in the context of competitive oil and gas bid evaluations. We have said,

[T]he appellant is entitled to a reasoned and factual explanation for the rejection of its bid. Appellant must be given some basis for understanding and accepting the rejection or alternatively appealing and disputing it before this Board. The explanation provided must be a part of the public record and must be adequate so that this Board can determine its correctness if disputed on appeal. Steven and Mary J. Lutz, 39 IBLA 386 (1979); Basil W. Reagel, 34 IBLA 29 (1978); Yates Petroleum Corp., 32 IBLA 196 (1977); Frances J. Richmond, 24 IBLA 303 (1976); Arkla Exploration Co., 22 IBLA 92 (1975).

Southern Union Exploration Co., 51 IBLA 89, 92 (1980). This is not to say that the Board will substitute its own judgment for that of Departmental experts but rather that the Board will require sufficient facts and a sufficiently comprehensible analysis to ensure that a rational basis for the determination is present. M. Robert Paglee, 68 IBLA 231, 234 (1982). The same reasoning is true for the case now before us.

The increasing use of computer models to support decisionmaking makes the above requirements even more imperative. The running of a computer program is not a substitute for evaluation of the issue at hand but rather support for the decision made. ^{4/} BLM may not simply report the results of its computer analysis; it must reveal the underlying facts used to obtain the result and the assumptions on which the computer program is based and it must demonstrate why its facts and assumptions, and therefore its result, are more reasonable than the applicant's or offeror's, as the case may be. See Southern Union Exploration Co., 41 IBLA 81 (1979). The applicant must be given some basis for understanding why his or her plans do not meet the requirements of the law and applicable regulations.

In this case, although the computer printouts and data sheets included in the case file provided a record of the information BLM used that resulted in the negative revenue projections, there was no explanation as to where the

^{4/} Instruction Memorandum No. ID-83-134 states in part that the computer model in this case was developed "as a tool to be used in assessing the economics of agricultural development," and cautions: "You should not expect the computer model to make the decision to either allow or reject an entry. It is the responsibility of each manager to make an informed decision based upon the best information available."

data came from, why it provided a reasonable basis for evaluating appellant's desert land entry and what distinguished it from appellant's plan. In that respect the BLM decision appealed in this case was deficient.

[2] Nevertheless, in response to our request, BLM has submitted the earlier-identified documents which describe the basis on which the computer analysis was developed and show that it has a reasonable relationship to the evaluation of desert land entries, when used as an evaluation tool. BLM's response to appellant's arguments on appeal provides the missing support for its data and points out the deficiencies in appellant's plan. BLM states that its information comes from many sources, including county extension agents, agricultural services offices, universities, banks, and seed companies, as referenced in the materials submitted to the Board. BLM reports that the average yield for Lemhi County on Soil Conservation Service Class IV soils is 2 tons of alfalfa hay per acre and 40 bushels of barley per acre and that the yields that appellant presented represent above average yields due to good climate conditions in the last 2 to 3 years. BLM explains that its yield figures are based on the class of the land which takes into consideration both soil structure and limiting factors such as climate, potential for erosion, slope, moisture holding capacity, and fertility. BLM projects that based on the location, soils, climate, and average adjacent farm yields, appellant's entry would produce 3 to 3.5 tons per acre of alfalfa and 65 bushels per acre of barley "at the very most." BLM asserts that it cannot assess the abilities of individual farmers and therefore its analysis must use average yield figures.

BLM's costs for the irrigation system reflect prices that would be available to all individuals based on the best available information. BLM

asserts that it is proper to use local estimates because the nearest town is 150 miles away and not everyone would travel to purchase equipment from outside sources and to use new equipment prices because it does not have the resources to research the availability, price, and condition of used equipment for every desert land entry evaluation. BLM recognizes that it is possible for an entryman to shop around for good prices, trade work, or use equipment he already owns but asserts that to realistically determine economic feasibility it must nevertheless show what the costs for the items would be. Finally, BLM states that it used custom rates to reflect planting and harvesting costs, not to question appellant's abilities, but because he does not own any farm equipment and is not in the farming business, and because such rates approach the true costs of farming.

As requested by the Board, BLM ran its computer analysis using 3.5 tons per acre for alfalfa and 65 bushels of barley per acre and appellant's price for pipe and wheel lines. The latter resulted in the total projected cost for the irrigation system being \$65,543.20 instead of the BLM estimate of \$91,804.80. Even with this savings at a maximum expected yield the net adjusted revenue figure arrived at is only \$3,721.77 per annum.

Appellant has provided no comment on the materials and response submitted by BLM.

We conclude that BLM's determination that appellant's proposed plan of irrigation is not economically feasible was proper and we affirm BLM's rejection of his desert land entry application.

Richard Platt, 2 IBLA 60 (1971).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Idaho State Office is affirmed.

Will A. Irwin
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

Anne Poindexter Lewis
Administrative Judge

